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2006 OCT -6 AM 10:32

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October 5, 2006

Mr. Mark Krausse
Executive Director
California Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: Request for Commission Review of FPPC Advice Letter No. I-06-138 and FPPC Advice Letter No. I-06-071; Alternative Proposed Draft Regulation 18530.10 and Amendment to Regulation 18215(c)(16)

Dear Mr. Krausse:

This is a request for Commission review of FPPC Advice Letters Nos. I-06-138 and I-06-071, copies attached as Attachments "C" and "D." (*See Munn & Scogg Advice Letter*, FPPC File No. I-86-175.) The initial advice request letters are both attached and are located in this submission after the cited advice letters.

In the alternative, this is a request for the Commission to consider the attached proposed Regulation 18530.10 and amendment of Regulation 18215(c)(16) as an alternative to issuing new advice. See Attachments "A" and "B." The Commission may consider a regulatory solution of more general applicability to the regulated community than issuance of a new advice letter.

Importance of Review of Advice Letters

This appeal concerns an issue of substantial importance to the regulated community of hundreds of recipient committees that are sponsored by corporations, trade associations and labor organizations.

Advice Letter No. I-06-138, combined with Advice Letter No. I-06-071, have considerably muddled the interpretation of what is, and what is not, a payment by a sponsor for PAC administration that would be subject to the contribution limits of Proposition 34.

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Problems with Staff Analysis and Conclusions

Advice Letter I-06-138 concludes that when a PAC sponsor pays the costs of fundraising for the PAC to raise funds for its general purposes, including funds the PAC uses to make contributions to candidates for state elective office, those payments for fundraising expenses are subject to the limits of Government Code section 85303, subdivision (a). The analysis says: “[c]ontributions ‘for the purpose of making contributions to candidates for elective office’ include payments used to generate such contributions.” The analysis concludes that “[w]ays and means that ‘facilitate’ accomplishment of a purpose may be evidence of the purpose no less valid than methods more ‘directly’ aimed at the same end result.”

Advice Letter No. I-06-071 implies that even categories of administrative expenses that are specifically exempt under Regulation 18215(c)(16) *might be* subject to contribution limits. This advice letter indicates similarly that such payments used to “facilitate” the making of a contribution that is subject to limits also are “made for the purpose of making a contribution” under Government Code section 85303, subdivision (a).

The staff issue analysis of the two letters is flawed. The advice letter engages in an extensive review of the meaning of Regulation 18215(c)(16). However, scant attention is paid to interpretation of the meaning of Government Code section 85303, subdivisions (a) and (c), the now not so newly-enacted provision of Proposition 34. The advice request was for analysis of the impact of this new statute on the regulation, and in particular the exclusion of PAC fundraising expenses from the exception found in subdivision (c)(16). Advice Letter No. I-06-138 makes much of a largely irrelevant point – that in 1997 the undersigned had requested the Commission to include PAC fundraising expenses in the exclusion, and that the Commission declined to do so at that time. While this “gotcha” may be interesting, it hardly substitutes for analysis. The Regulation 18215(c)(16) exception (and the exclusion) interpreted a different statute then in effect that imposed limits on *all* contributions to recipient committees. In that subdivision, fundraising expenses of a PAC paid by a sponsor were not included in a list of expenses paid by a sponsor that were excluded from contribution limits but included for purposes of reporting. For the reasons discussed in detail in the first advice request and in less detail below, it is clear that the statute has some impact on the meaning of the Regulation and the exclusion of fundraising expenses.

Issue Presented

The two advice letter requests asked the Commission to advise on the application of Government Code section 85303, subdivision (c), to the payment by a sponsoring organization of fundraising expenses of its sponsored political committee. As stated in the second request (to which I-06-138 is addressed): **“Is a payment by a sponsor of the fundraising expenses of its sponsored PAC “a contribution ... for the purpose of making contributions to candidates for elective state office,” as the term is used in Government Code section 85303, subdivision (a)?**

The advice request letters discussed the two most common issues concerning a sponsor’s

Letter to Mr. Mark Krausse
Executive Director
Fair Political Practices Commission
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payment of its PAC's fundraising expenses are not "contributions ... for the purpose of making contributions to candidates for elective state office," as follows:

Regular Direct Monetary and Non-Monetary Contributions to State Candidates: The first answer is that contributions to a PAC that are actually solicited and used for making monetary and non-monetary contributions (goods and services) to candidates for state elective office campaigns would come within that definition.

Special Non-Monetary Contributions: The second answer is that third party payments that benefit the PAC but also directly benefit a candidate for state elective office, such as a sponsor's payment of fundraising expenses for a PAC fundraiser held at the behest of a candidate for state elective office that raised monetary contributions for the candidate would come within that definition. *Wilson Advice Letter*, No. A-05-101, 2005 WL 1609624.

Sponsor's Regular Fundraising Expenses: At pp. 5-6 of my April 19, 2006, advice request letter, I discussed why a sponsor's payment of its PAC's fundraising expenses would not be a "contribution ... for the purpose of making contributions to candidates for state elective office." I attempted to draw a bright line to distinguish this situation from the former two, where a contribution is received that is then used or is at least useable to make another monetary or non-monetary contribution at the behest of a candidate for state elective office. I described that bright line as "direct vs. indirect" support of candidates, which seems a useful way to look at demarking the line - because the construction of the sentence "contribution ... made for the purpose of making contributions to candidates for state elective office" suggested to me that the first contribution had to have a direct connection to the second, or put another way, the "contribution in" had to be part of the source of the second "contribution out."

The advice request letters reasoned that, if a sponsor's payment of its PAC's administrative expenses merely facilitated the making of contributions to candidates for state elective office, that "contribution in" (even if it is a non-monetary contribution) would not be part of the source of any "contribution out." Hence, it would not be a "contribution ...for the purpose of making..." Likewise in almost if not all of the examples provided in question 2 of the first letter request, the examples were of sponsor payments that could not be used to make contributions to such candidates, even though the payments from the sponsor in those circumstances directly benefitted the PAC in a concrete way.

I would request that the Commission review these advice letters and direct staff to revise the conclusions of those letters, or to issue a new advice letter, to indicate that a sponsor's payment of a PAC's fundraising expenses is not "made for the purpose of making contributions" to candidates for state elective office under Government Code section 85303, subdivision (a) or (c) unless the payments would constitute non-monetary contributions to a particular candidate arising from a fundraising event by the PAC on behalf of that candidate.

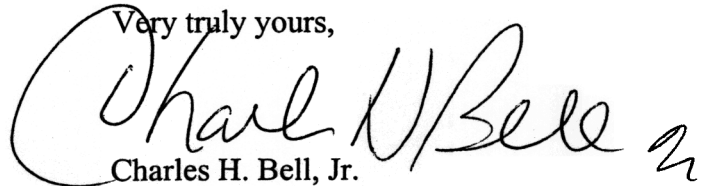
Letter to Mr. Mark Krausse
Executive Director
Fair Political Practices Commission
October 5, 2006
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Alternative - Two Proposed Regulations

In the alternative, I would request the Commission consider either the adoption of a new regulation or the amendment of Regulation 18215(c)(16), as indicated in the attachments A and B hereto.

Thank you for presenting this matter to the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles H. Bell, Jr.", with a stylized flourish at the end.

Charles H. Bell, Jr.

CHB/jg

cc: Pamela Dade Wilson, Esq., President, California Political Attorneys Association
Lance H. Olson, Esq.
Steven Lucas, Esq.

ATTACHMENT "A"

PROPOSED NEW REGULATION 18530.10

(a) A payment made by the sponsor of a recipient committee for the purpose of defraying fundraising expenses of the committee is not a 'contribution made for the purpose of making contributions to candidates for state elective office' under Government Code section 85303, subdivision (a), unless the payment is to defray the costs of fundraising by the sponsored committee for an event at which monetary contributions are solicited for or made to a candidate for elective state office, or unless the payment of the fundraising expenses by the sponsor is made at the behest of the candidate for elective state office.

(b) A payment made by the sponsor of a recipient committee for the purpose of defraying expenses of the committee identified in 2 CCR 18215(c)(16) is not a 'contribution made for the purpose of making contributions to candidates for state elective office' under Government Code section 85303, subdivision (a), unless the payment is made to defray such expenses of the sponsored committee for an event at which monetary contributions are solicited for or made to a candidate for state elective office, or unless the payment of such expenses by the sponsor is made at the behest of the candidate for elective state office.

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Fair Political Practices Commission
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ATTACHMENT "B"

PROPOSED AMENDMENT OF REGULATION 18215(c)(16)

18215. Contribution.

(c) Notwithstanding any other provision of this section, the term "contribution" does not include:

(16) A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. A "sponsoring organization" may be any person (see Gov't Code 82047) except a candidate or other individual (see Gov't Code 82048.7). "Establishment and administration" means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising expenses as set forth in 2 CCR 18530.10, and other expenses incurred in setting up and running a sponsored committee.

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Executive Director
Fair Political Practices Commission
October 5, 2006
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ATTACHMENT "C"

FPPC ADVICE LETTER NO. I-06-138
& ADVICE REQUEST



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OCT 02 2006

BELL, McANDREWS & HILTACHK, LLP

FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

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September 29, 2006

Charles H. Bell, Jr.
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Suite 801
Sacramento, CA 95814

RE: Your Request for Informal Assistance
Our File No. I-06-138

Dear Mr. Bell:

This letter is in response to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹ Because your question is general in nature, we provide you with informal written assistance.²

QUESTION

When is a sponsor's payment of the fundraising expenses of its sponsored PAC treated as a "contribution... for the purpose of making contributions to candidates for elective state office," subject as such to the contribution limits of section 85303(a)?

CONCLUSION

The answer to this question begins and ends with the *purpose* of the payment. Contributions "for the purpose of making contributions to candidates for elective state office" include payments used to generate such contributions. The ultimate purpose may be inferred from the way the money is used. But notwithstanding your suggestion, ways and means that "facilitate" accomplishment of a purpose may be evidence of the purpose no less valid than methods more "directly" aimed at the same end result.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not offer the immunity provided by a Commission opinion or formal written advice. (Regulation 18329(c)(3).)

FACTS

You represent a number of sponsored state political committees (“PACs”) and their sponsors. For some of these, you act as treasurer. Many organizations that sponsor these PACs pay all or part of their PACs’ fundraising expenses. You tell us that “[t]he *raison d’etre* of a sponsored PAC is to raise funds to make contributions.” In an earlier request for advice, which resulted in our Advice Letter No. I-06-071, you inquired into the various kinds of payments by a sponsor to its sponsored committee that might be treated as a “contribution... made for the purpose of making contributions to candidates for elective state office,” subject as such to the contribution limits of section 85303(a).

You now refine the original inquiry. As we understand your premises, you believe that a sponsor’s contribution to its PAC, actually solicited and used for making monetary or non-monetary contributions to a candidate for elective state office, would be a contribution governed by the limits of section 85303(a). You observe that the same result obtains when the sponsor pays for a PAC fundraiser conducted at the behest of a candidate for elective state office, to raise and transmit contributions to that candidate.

In both of these cases, the sponsor makes a contribution to its PAC in order to generate further contributions to the candidate. As you phrase it, the sponsor in these two examples makes a contribution that “is then used or is at least useable to make another monetary or non-monetary contribution at the behest of a candidate for elective state office.” Such payments are limited by section 85303(a) because they are contributions “made for the purpose of making contributions.” These contributions are recouped from proceeds of the fundraising event and are then transmitted to the candidate, along with any additional sums generated by the event.

As we understand your position, you believe that the foregoing examples may illustrate the *only* circumstances where a sponsor’s payment for a PAC fundraiser would be governed by section 85303(a). In those cases, you say that there is a direct connection between the contributions flowing into the PAC and the funds flowing out from the PAC to the candidate, after the fundraiser has been held.

In contrast, you note that when a sponsor makes payments to a committee for the purpose of supporting regular, ongoing committee expenses, those payments cannot be treated as “contributions” because a sponsor’s payment towards the administration of a committee is excluded from classification as a “contribution” by regulation 18215(c)(16). You observe that a sponsor’s payment of committee staff salary and debts owed to third-party vendors are expenses of committee “administration,” and contend that this remains true even when those services were rendered in support a committee fundraiser.

You consider these latter payments to be “indirect” administrative support of a fundraising event, distinguishable from the “direct” contributions illustrated in the first two examples because:

“[I]f a sponsor’s payment of its PAC’s administrative expenses merely facilitated the making of contributions to candidates for elective state office, that ‘contribution in’... would not be part of the source of any ‘contribution out’.”

ANALYSIS

Your question, in effect, is whether a payment that “merely facilitated” the making of contributions to candidates for elective state office is legally distinguishable from a “contribution... made for the purpose of making contributions to candidates for elective state office.” The practical significance of this question is very great. Section 85303(a) limits contributions to a committee (other than a political party committee) to \$5,000 per calendar year – when the contribution is made for the purpose of making contributions to candidates for elective state office. All other payments to such committees, including contributions, are *not* limited. (Section 85303(c).)

Regulation 18215 clarifies the Act’s definition of the term “contribution,” which is given at section 82015. Subdivision (c) of regulation 18215 contains a list of sixteen kinds of payments that are deemed not to be “contributions” within the meaning of the Act. In particular, subdivision (c)(16) excludes:

“A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. A ‘sponsoring organization’ may be any person (see Gov’t Code § 82047) except a candidate or other individual (see Gov’t Code § 82048.7). ‘Establishment and administration’ means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee.”

The intent of this regulation, as we explained in our prior letter, is to *exclude* from classification as “contribution” payments made for establishment and administration of a sponsored committee.” In adopting this rule, the Commission openly chose not to extend its provisions to payments made to underwrite a committee’s fundraising costs. In fact, you proposed a draft amendment specifically including an exemption for payment of committee fundraising costs, which the Commission twice declined to insert.³ There is no basis for concluding that subdivision (c)(16) was ever intended (or can now be read) to exempt payment of committee fundraising costs from the definition of “contribution.”

³ This is reflected in the Minutes of the Commission’s special meetings on December 30, 1996 and January 21, 1997.

You confront this problem by offering a distinction between “direct” payment of fundraising costs, as against “indirect” payments that “merely facilitated” the conduct of fundraisers. As we understand the proposed distinction, you would agree that a sponsor would be subject to the contribution limit of section 85303(a) if it paid a third party to put together a fundraiser on behalf of the sponsored committee, to enable the committee to contribute the proceeds to candidates for elective state office. But if the sponsor paid committee staff and their vendors to accomplish the very same purpose, those payments would “merely facilitate” the fundraising event and would exempt the sponsor from the contribution limits of section 85303(a).

We believe that a payment to “facilitate” the making of a contribution is also a payment made for the “purpose” of making the contribution. Moreover, we believe that *all* of the payments you have described in your examples are payments to “facilitate” the making of contributions, and that there is no principled basis for categorizing payments to a third-party fundraiser as “contributions,” while payments to a committee employee performing the same task would be classified as something quite different.

We cannot find in the text of regulation 18215(c)(16), especially in light of its legislative history, any indication that a sponsor may treat payments that “facilitate” the conduct of fundraising events as payments for “the establishment and administration of a sponsored committee.” It would be particularly difficult to read regulation 18215(c) in such a fashion, since exceptions to a statute or regulation are read narrowly, at least in the absence of circumstances compelling departure from this settled rule. As we recently noted in the *McCowan* Advice Letter, No. A-05-179:

“It is fundamental cannon of statutory construction that exceptions are to be construed strictly and narrowly.” (*Ascarate* Advice Letter, No. A-04-012; citing *Deitsch* Advice Letter, No. A-02-129 quoting *Ticket Track California, Inc. v. Department of Motor Vehicles* (2002) 97 Cal.App.4th 1251; 119 Cal. Rptr. 2d 176.)

No less pertinent in the present context:

“That construction is favored which would defeat subterfuges, expediences, or evasions employed to continue the mischief sought to be remedied by the statute, or to defeat compliance with its terms, or any attempt to accomplish by indirection what the statute forbids.” (*Shaw v. McMahan* (1987) 197 Cal.App. 3d 417, 430.)

Ultimately, our concern with your proposal is that it is crafted precisely to change the legal character of payments that cover the cost of a fundraising event “indirectly,” by hiring a staff member for example, to perform the services of a fundraising contractor. The Act’s definition of “contribution” at section 82015 is broad by design, sweeping in

from the outset any "payment... unless it is clear from the surrounding circumstances that it is not made for political purposes."

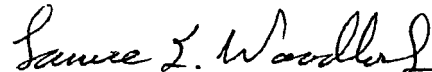
Payments made to a PAC are especially likely to have been made for a political purpose. Indeed, you noted in your original request for advice that "the *raison d'être* of a sponsored PAC is to raise funds to make contributions." We cannot concur in a proposed construction of regulation 18215(c)(16) that ignores a core function of the PACs you represent, by reading into the regulation a mechanism that would convert fundraising costs into "costs of establishment and administration," effectively resurrecting the 1995 proposal that was rejected by the Commission.

We advise instead that the answer to your question is found in the language of section 85303 itself, which imposes a contribution limit in subdivision (a) on payments made "for the purpose of making contributions to candidates for elective state office," while subdivision (c) expressly lifts those limits for payments made for other purposes. It is the *purpose* of the payment, not mechanics of routing, that triggers the contribution limits of section 85303(a). Thus when a sponsored committee is or will be working on a fundraising event, using committee resources to do so, you should conclude that most sponsor payments for this use of committee resources (or payment of vendor invoices) are made for the purpose of raising funds, not for the routine administration of the PAC.

To illustrate, payments made by a sponsor and used by the committee to pay fundraising consultants (or committee staffers performing equivalent services), for the production and dissemination of fundraising solicitations and similar literature, for room rental, food and beverage, entertainment, along with similar goods and services, will all be subject to the limits of section 85303(a) when the committee makes contributions to candidates for state elective office. Of course, payments by the sponsor to support the committee's processing and reporting of contributions and expenditures, performed by the committee treasurer in the normal course of his or her duties, would properly be classified as costs of administration. But except in unusual circumstances, we would expect that such administrative expenses would amount only to a small fraction of a committee's overall fundraising costs.

Sincerely,

Luisa Menchaca
General Counsel



By: Lawrence T. Woodlock
Senior Counsel, Legal Division

LTW:rd

I:\AdviceLtrs\06-138

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PAUL T. GOUGH
OF COUNSEL

July 11, 2006

Luisa Menchaca
General Counsel
Lawrence T. Woodlock
Senior Commission Counsel
California Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: FPPC Advice No. I-06-071

Dear Ms. Menchaca and Mr. Woodlock:

This is in further response to the above-referenced advice letter dated May 27, 2006, and to our meeting in your office on June 21, 2006, to discuss alternative approaches to framing the question.

The initial question and this revised question essentially ask the Commission to advise on the application of Government Code section 85303, subdivision (c), to the payment by a sponsoring organization of fundraising expenses of its sponsored political committee.

Question Presented

“Is a payment by a sponsor of the fundraising expenses of its sponsored PAC “a contribution ... for the purpose of making contributions to candidates for elective state office,” as the term is used in Government Code section 85303, subdivision (a)?

In my April 19, 2006, request letter, I discussed the two most common issues, and also discussed the reasons I believe that a sponsor’s payment of its PAC’s fundraising expenses are not “contributions ... for the purpose of making contributions to candidates for elective state office.”

Regular Direct Monetary and Non-Monetary Contributions to State Candidates: The first answer is that contributions to a PAC that are actually solicited and used for making monetary and

Letter to Luisa Menchaca, General Counsel
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non-monetary contributions (goods and services) to candidates for state elective office campaigns would come within that definition.

Special Non-Monetary Contributions: The second answer is that third party payments that benefit the PAC but also directly benefit a candidate for state elective office, such as a sponsor's payment of fundraising expenses for a PAC fundraiser held at the behest of a candidate for state elective office that raised monetary contributions for the candidate would come within that definition. *Wilson Advice Letter*, No. A-05-101, 2005 WL 1609624.

Sponsor's Regular Fundraising Expenses: At pp. 5-6 of my April 19, 2006, advice request letter, I discussed why a sponsor's payment of its PAC's fundraising expenses would not be a "contribution ... for the purpose of making contributions to candidates for state elective office." I attempted to draw a bright line to distinguish this situation from the former two, where a contribution is received that is then used or is at least useable to make another monetary or non-monetary contribution at the behest of a candidate for state elective office. I described that bright line as "direct vs. indirect" support of candidates, which seems a useful way to look at demarking the line - because the construction of the sentence "contribution ... made for the purpose of making contributions to candidates for state elective office" suggested to me that the first contribution had to have a direct connection to the second, or put another way, the "contribution in" had to be part of the source of the second "contribution out."

Thus, if a sponsor's payment of its PAC's administrative expenses merely facilitated the making of contributions to candidates for state elective office, that "contribution in" (even if it is a non-monetary contribution) would not be part of the source of any "contribution out." Hence, it would not be a "contribution ...for the purpose of making..." Likewise in almost if not all of the examples provided in question 2 of that letter request, the examples were of sponsor payments that could not be used to make contributions to such candidates, even though the payments from the sponsor in those circumstances directly benefitted the PAC in a concrete way.

Thank you for your response to this revised request. Please feel free to contact me if you have any questions about the request.

Very truly yours,

Charles H. Bell, Jr.

CHB/jg

Letter to Mr. Mark Krausse
Executive Director
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ATTACHMENT "D"

FPPC ADVICE LETTER NO. I-06-071
& ADVICE REQUEST



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FAIR POLITICAL PRACTICES COMMISSION

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May 24, 2006

Charles H. Bell, Jr.
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Sacramento, CA 95814

**RE: Your Request for Informal Assistance
Our File No. I-06-071**

Dear Mr. Bell:

This letter is in response to your inquiries regarding the campaign provisions of the Political Reform Act (the "Act").¹ Your request sought a Commission Opinion or written advice under section 83114. Because your questions are most suitable for informal written assistance, we respond in that manner.²

QUESTIONS

Question 1: Does section 85303(c), enacted in 2001 as part of Proposition 34, conflict with the previously adopted regulation 18215(c)(16), and with a recent FPPC policy statement to the effect that payments by a committee's sponsor to defray fundraising expenses of its committee are subject to the contribution limits of section 85303(a)?

Question 2: If the answer to the first question is "no," then which of the following committee expenditures are "fundraising expenses" subject to the limits of section 85303(a) when paid by the committee's sponsor:

- a. Staff salary for processing combined association dues/PAC contribution checks; entering contribution data from the dues/PAC collection process or a stand-alone PAC fundraiser;
- b. Staff salary for copying contributor response information, deposit slips and checks, identifying and following up on incomplete contributor occupation or employer information;

¹ Government Code sections 81000-91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not offer the immunity provided by a Commission opinion or formal written advice. (Regulation 18329(c)(3).)

- c. Staff salary spent identifying potential affiliated contributor contribution information;
- d. Staff salary spent on sending thank-you notes or preparing documents, certificates, or other acknowledgments of PAC donors?
- e. Staff salary spent on writing or designing PAC fundraising solicitations for the sponsor's newsletter, website, or other solicitation avenue;
- f. Printing and postage costs for a calendar of upcoming PAC fundraisers and events;
- g. Costs of printing and postage for a donor thank-you mailing;
- h. Costs of printing a poster identifying major PAC donors as a means of donor recognition;
Costs of a sponsor's general conference invitation if it refers to a PAC fundraiser held in conjunction with the sponsor's conference;
- j. Costs of goods or services provided as premiums for PAC fundraising events or auctions (e.g., golf balls, vehicles, vacation items, etc.);
- k. Costs of staff travel (airfare, meals, lodging, etc.) for attendance at a PAC fundraising event.

CONCLUSIONS

Question 1. Section 85303(c) does not conflict with regulation 18215(c)(16) or with the FPPC's position that payments by a committee's sponsor to defray fundraising expenses of its committee are subject to the contribution limits of section 85303(a).

Question 2. Any or all of the listed costs may be "fundraising expenses" subject to the limits of section 85303(a) when paid by the committee's sponsor. The answer in each case would depend on the particular facts and circumstances.

FACTS

Your firm represents a number of sponsored state political committees ("PACs") and their sponsors. For some of these PACs, you act as treasurer. Many organizations that sponsor these PACs pay all or part of their PACs' fundraising expenses. You advise us that "[t]he *raison d'être* of a sponsored PAC is to raise funds to make contributions." This may not be the case for all sponsored committees, but we presume that it is true with respect to the committees about which you write. Recently, in its September 2005 Bulletin (Volume 31, No. 3), the FPPC included an article discussing the reporting obligations and the application of contribution limits when sponsoring organizations pay the fundraising expenses of their sponsored PACs. The specific topic of the article was regulation 18215(c)(6). The point of the article is set out in the following quotation:

"[Regulation 18215(c)(16)] allows a political committee's sponsoring organization to pay for the 'establishment and administration' of the committee without counting those payments as contributions to the committee.

* *

Other costs paid by a sponsoring organization are contributions to the committee, such as the cost of raising funds for the committee, and are subject to regular reporting and to contribution limits for committees that make contributions to state candidates.”

This advice followed a letter of June, 2005 (the *Wilson* Advice Letter, No. A-05-101). Since regulation 18215(c)(16) was adopted prior to the passage of Proposition 34, which introduced the current section 85303, you question the continuing vitality of the regulation, *and* of advice based on that regulation, as presented in last year’s bulletin. Your doubts are based on a concern that section 85303(c) cannot be reconciled with a regulation that appears to treat a sponsor’s payment of its PAC’s fundraising costs as a contribution subject to the limits of section 85303(a), and that the new statute preempts regulation 18215(c)(16), to the extent that the regulation is at odds with the new statute.

ANALYSIS

Question 1: Does regulation 18215(c)(16) conflict with section 85303?

The statute at issue here is section 85303(a) and (c), which provides as follows

“(a) A person may not make to any committee, other than a political party committee, and a committee other than a political party committee may not accept, any contribution totaling more than five thousand dollars (\$5,000) per calendar year for the purpose of making contributions to candidates for elective state office.

* * *

(c) Except as provided in Section 85310, nothing in this chapter shall limit a person’s contributions to a committee or political party committee provided the contributions are used for purposes other than making contributions to candidates for elective state office.”

These provisions refer only to the treatment of “contributions.” Subdivision (a) establishes a limit on “contributions” to specified committees when the contributions are made “for the purpose of making contributions to candidates for elective state office.” Subdivision (c) is a complementary provision specifying that, but for section 85310,³ “nothing in this chapter shall limit a person’s contributions... used for purposes *other than* making contributions for elective state office.” (Emphasis added.)

³ An exception not at issue in this letter.

Regulation 18215 clarifies the Act's definition of the term "contribution," which is given at section 82015. Subdivision (c) of regulation 18215 contains a list of sixteen kinds of payments that are not deemed to be "contributions" within the meaning of the Act. Subdivision (c)(16) excludes:

"A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. A "sponsoring organization" may be any person (see Gov't Code § 82047) except a candidate or other individual (see Gov't Code § 82048.7). "Establishment and administration" means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee."

The purpose of this regulation, in short, is to *exclude* payments for establishment and administration of a sponsored committee from the term "contribution." Section 85303, by contrast, states rules for the treatment of *contributions*. The conflict that you see between statute and regulation does not exist. Although the regulation fails to exclude fundraising payments from classification as "contributions," its effect does not conflict with the statute; rather, it makes those "contributions" subject to the statute.⁴

As you will recall, when regulation 18215(c)(16) was before the Commission for adoption, you proposed a draft amendment specifically including an exemption for payment of committee fundraising costs, which the Commission twice declined to insert.⁵ There is no basis in the legislative history for concluding that subdivision (c)(16) was ever intended to exempt payment of committee fundraising costs from the definition of "contribution." Thus we have advised after the adoption of regulation 18215(c)(16) that the provisions of regulation 18419(c) must still be observed if a sponsor wishes to avoid qualification as a committee in its own right when it makes *contributions* to its committee by paying its fundraising costs. (*Jacobs Advice Letter*, No. A-03-208.)⁶ Moreover,

⁴ In the *Gutierrez Advice Letter*, No. I-01-221, we explained how subdivisions (a) and (c) of section 85303 work together: "This general contribution limit for committees is applicable to general purpose committees that make contributions to candidates for elective state office. However, subdivision (c) clearly contemplates that the contribution limit in subdivision (a) will not limit contributions 'for purposes other than making contributions to candidate for elective state office.'" We then referred to regulation 18531(e), which provides for a committee's retention of contributions in excess of the limit of section 85303(a), when they are earmarked for purposes *other than* making contributions directly to candidates for elective state office, and are deposited into a separate account established specifically to hold such "non-candidate" funds.

⁵ This is reflected in the Minutes of the Commission's special meetings on December 30, 1996 and January 21, 1997.

⁶ Regulation 18419(c) provides, that a sponsor does not become a committee within the meaning of section 82013 if the sponsor does not directly or indirectly make or receive contributions in excess of the qualifying thresholds of section 82013.

regulation 18419(c)(1) expressly states that all of a sponsor's payments to its committee, whether from member dues or its own treasury, are "contributions" to the committee unless the payments are used for costs of establishment and administration of the committee. None of this conflicts with section 85303, whose purpose is *not* to define the term "contribution," but merely to state whether and when contributions will be limited.

Question 2: Which Types of Fundraising Contributions Are Subject to the Limits of Section 85303(a)?

The remaining question is the extent to which contributions from a sponsor to defray the costs of a committee fundraiser are contributions "for the purpose of making contributions to candidates for elective state office."

The answer to this question, in principle, is uncomplicated. Section 85303(a) provides that *all* contributions to committees (other than political party committees) are subject to the specified calendar-year limit, if the contributions are made for the purpose of making contributions to candidates for elective state office. Subdivision (c) creates no exception to this blanket limitation – it merely states a converse rule for contributions *not* made for the purpose of making contributions to candidates for elective state office.

In the *Wilson* Advice Letter, No. A-05-101, which concerned an event whose main purpose was something other than political fundraising, we advised that:

"[B]ecause the fundraiser will be held for dual purposes, any costs incurred by [the sponsor] that are related to the political fundraising efforts which are not reimbursed by the committee would be considered non-monetary contributions from [the sponsor] to the committee."

We concluded: "Therefore, the costs associated with the political aspect of the event must be reported as contributions to the committee." (*Id.*)

Your letter takes issue with any implication that a sponsor's payment of fundraising costs on behalf of its sponsored committee may constitute non-monetary contributions limited by section 85303(a) because, although the funds raised will be used to make contributions to state candidates, the payments "only indirectly" benefit the candidates and, therefore, are not "for the purpose of making contributions to candidates for elective state office." Examples of the "indirect" costs that you believe should not be subject to the limit of section 85303(a) are found in the eleven subparts of Question Two, which include *pro rata* shares of staff salary reflecting time spent on tasks related to fundraising, the costs of incidentals such as "thank-you" mailings to donors, premiums given as incentives for fundraising events, and other costs that advertise or promote the fundraiser among other committee events.

Your distinction between "direct" and "indirect" benefit to candidates appears to grow out of a concern that the committees you described to us have, as their core mission,

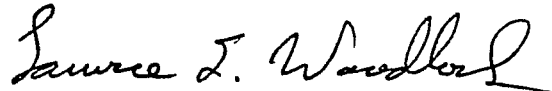
fundraising to generate money that will be used to make contributions to candidates for elective state office. Since the costs of “administering” such committees may in some sense be “related” to the candidate fundraising mission, you differentiate these “related” activities by introducing labels referring to “direct” and “indirect” candidate benefit. But nothing is gained by switching labels. Committees will have “administrative costs” even when their sole purpose is candidate fundraising. The task is simply to identify them.

We have seen that in adopting regulation 18215(c)(16), the Commission twice rejected a proposed amendment that would have included the costs of fundraising among the costs of “administering” a sponsored committee. Regulation 18215(c)(16) provides no authority for a *blanket* exemption of staff salaries and other expenses from treatment as in-kind contributions by the sponsor. This position is consistent with other rules not questioned in your request, such as regulation 18423(a), which specifies that the salaries of employees are reportable contributions whenever an employee spends more than ten percent of his or her compensated time in any one month “rendering services for political purposes” – without any further reference to the nature of these services.

Your individual sub-questions are phrased as general or hypothetical propositions not tethered to specific transactions. We cannot identify abstract categories of payments exempt in all cases from treatment as being “for the purpose of making contributions” to candidates for elective state office. The classification of a committee’s costs must proceed from knowledge of the routine costs incurred to maintain the committee’s day-to-day existence, along with information on the costs associated with particular activities in pursuit of the committee’s goals – in this case, fundraising. With no particulars to consider here, we cannot offer more concrete guidance on separating the sponsor’s payment of “administrative costs,” which is not a “contribution” by reason of regulation 18215(c)(16), from its payments in support of fundraising activities that are subject to the limits of section 85303(a).

Sincerely,

Luisa Menchaca
General Counsel



By: Lawrence T. Woodlock
Senior Counsel, Legal Division

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April 19, 2006

VIA HAND DELIVERY

Ms. Luisa Menchaca
General Counsel
California Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: Request for Advice or Opinion

Dear Ms. Menchaca:

This letter requests an opinion under California Government Code section 83114, subdivision (a) or advice under section 83114, subdivision (b), regarding the application of Government Code section 85303, subdivision (c), to the payment by a sponsoring organization of fundraising expenses of its sponsored political committee. This subject is worthy of consideration since, to our knowledge, the Commission has not had the occasion to review the impact of the 2001 enactment of Section 85303, in particular subdivision (c), on 2 CCR 18215(c)(16). This regulation was adopted in 1997 in response to Proposition 208 - which Proposition 34 repealed.

Questions

- 1 Does Government Code section 85303, subdivision (c), adopted as part of Proposition 34, preempt 2 CCR 18215(c)(16), or the recently enunciated policy that fundraising expenses of a political committee paid for by its sponsor are subject to the contribution limits of Government Code section 85303, subdivision (a).
- 2 If the answer to question 1 is "no," then which of the following types of expenditures paid for by the sponsor of a political committee are "fundraising" expenses for purposes of this policy.

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A. Staff Salary:

- (1) Staff salary spent processing combined association dues/PAC contribution checks; entering contribution data from the dues/PAC collection process or a stand-alone PAC fundraiser.
- (2) Staff salary spent copying contributor response information, deposit slips and checks, identifying and following up on incomplete contributor occupation/employer information.
- (3) Staff salary spent identifying potential affiliated contributor contribution information.
- (4) Staff salary spent on sending thank you notes or preparing documents, certificates or other recognition of PAC donors.
- (5) Staff salary spent on writing or designing PAC fundraising invitations or fundraising solicitations for the PAC sponsor's newsletter, website, or other solicitation avenue.

B. Other Costs:

- (1) Costs of printing and postage for a calendar of upcoming PAC fundraisers and events.
- (2) Costs of a sponsor's general conference invitation if it contains reference to a PAC fundraiser held in conjunction with the sponsor's conference.
- (3) Costs of printing and postage for a donor thank you mailing.
- (4) Costs of printing a poster board identifying major PAC donors as a means of donor recognition.
- (5) Costs of goods or services provided as premiums for PAC fundraising events or auctions (e.g., golf balls, vehicles, vacation items, etc.)
- (6) Costs of staff travel (airfare, meals, lodging, etc.) for attendance at a PAC fundraising event.

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Facts

This firm represents a number of state political committees and their sponsors. For some of these political committees, we act as treasurer.¹ Many of these organizations pay part or all of the fundraising expenses of their sponsored political committees. Recently, in its September 2005 Bulletin (Volume 31, No. 3), the Commission included a long segment containing advice about the reportability and application of contribution limits when sponsoring organizations pay the fundraising expenses of their sponsored political committees. Included in this advice was the following:

[Title 2 California Code of Regulations, section 18215, subdivision (c)(16)]
allows a political committee's sponsoring organization to pay for the
"establishment and administration" of the committee without counting those
payments as contributions to the committee.

...

Other costs paid by a sponsoring organization are contributions to the committee,
such as the cost of raising funds for the committee, and are subject to regular
reporting and to contribution limits for committees that make contributions to
state candidates.

This advice followed that provided by the Commission in its June 20, 2005 advice letter to Pamela Lawton Wilson. (*Wilson Advice Letter*, FPPC Advice Letter No. A-05-101, 2005 WL 1609624.) The *Wilson Advice Letter* alludes to but does not analyze this issue in detail or in the context of Government Code section 85301, subdivision (c). Instead, it analyzes whether fundraising solicitations to members of the sponsoring organization would be exempt as "communications to members" under Government Code section 85312.²

¹ As a treasurer, the undersigned has a duty to comply with the requirements of the Act and Commission regulations, and this advice/opinion request is made on my behalf as treasurer.

² The advice letter concludes that PAC fundraising solicitations are not within the Government Code section 85312 exemption because they are not candidate or ballot measure endorsement communications. This request does not concern or raise that issue, as its premise is that the sponsored PACs are raising funds solely for PAC purposes and are not engaging in endorsement communications. Section 85312 and 85303, subdivision (c), are separate and different exceptions to the Chapter 5 contribution limits.

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The Bulletin, using the *Wilson Advice Letter* as a jumping off point, concludes the sponsor's funds are subject to Government Code section 85303, subdivision (a), contribution limits for committees that operate to support candidates for state elective office.

2 CCR 18215(c) provides:

(c) Notwithstanding any other provision of this section, the term "contribution" does not include: ...

(16) A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. A 'sponsoring organization' may be any person (see Gov't Code 82047) except a candidate or other individual (see Gov't Code 82048.7). 'Establishment and administration' means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee.

Government Code section 85303, subdivision (c) provides:

Except as provided in Section 85310, nothing in this chapter shall limit a person's contributions to a committee or political party committee provided the contributions are used for purposes other than making contributions to candidates for elective state office.³

Between 1997, when 2 CCR 18215(c)(16) was adopted, and the recent Bulletin notice and the *Wilson Advice Letter*, to our knowledge neither the Commission nor the staff has had the occasion to interpret the meaning of this regulation. Moreover, since the adoption of Government Code section 85303 as part of Proposition 34, neither the Commission nor the staff has had the occasion to interpret the meaning of subdivision (c) of section 85303 or its impact on 2 CCR 18215(c)(16).

³ Government Code 85310 is not pertinent to this request or analysis.

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Analysis of Question 1

A. Gov. Code § 85303, subdiv. (c) supercedes 2 CCR 18215(c)(16) as to a sponsor's payment of sponsored PAC fundraising expenses.

We believe that Government Code section 85303, subdivision (c), which provides there are no limits on a sponsor's payments for purposes other than making contributions to candidates, preempts the FPPC staff's interpretation of 2 CCR 18215(c)(16), that a sponsor's payments for the costs related to general PAC fundraising are subject to contribution limits.

Under Section 85303, subdivision (c), contributions not used for the purpose of making contributions to candidates for elective state office are not limited. A payment made by a sponsor solely to support fundraising of its sponsored PAC is not "used to make contributions to candidates." Hence, the blanket assertion in the Commission's September 2005 bulletin that "[b]ecause [a] committee makes contributions to state candidates, contributions to [that] committee are limited to \$5,600 from each source during 2006," appears to us to be flatly inconsistent with Government Code section 85303, subdivision (c).

Unless the sponsor's payment of general fundraising expenses of its sponsored PAC were interpreted to be used for purposes of making contributions to candidates for elective state office, 2 CCR 18215(c)(16) would appear to be inconsistent with and in conflict with Government Code section 85303, subdivision (c). Moreover, nothing in the September 2005 Bulletin or FPPC Advice Letter A-05-101 interprets section 85303, subdivision (c).

This letter takes no issue with the tenor of the *Wilson Advice Letter* comment that when a sponsor pays for a PAC's fundraiser for a candidate, the costs of that event fundraising would be considered a non-monetary contribution to the candidate, as would direct event costs for invitations, postage, food and beverages, because in that situation, the contribution would directly benefit the candidate and would be considered a non-monetary contribution by the sponsor.

However, the Bulletin and *Wilson Advice Letter* imply that costs that only indirectly benefit candidates to whom the PAC may contribute also are "used for contributions" to such candidates. In no other context of which we are aware has the Commission or staff concluded

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that such indirect costs are attributable as contributions “used for” contributions to candidates.⁴

The *raison d’etre* of a sponsored PAC is to raise funds to make contributions. Moreover, it is true that for a PAC that primarily supports candidates for state elective office by making contributions, all costs associated with such a PAC *indirectly benefit* candidates who are the recipients of a PAC’s contributions, and thus could be considered *in pari materia* with fundraising expenses. However, that is not the rationale of 2 CCR 18215(c)(16), which singles out fundraising expenses only for this special treatment.

Whatever the Commission’s current thinking or rationale may be, its current interpretation, as reflected in the Bulletin statement and Advice Letter A-05-101, flies in the face of the provision of section 85303, subdivision (c) that “nothing in this chapter shall limit a person’s contributions to a committee or political party committee provided the contributions are used for purposes other than making contributions to candidates for elective state office.”

The Commission’s position negates the full meaning of this important exception to the contribution limits of Chapter 5 of the Act applicable to PACs.

The better and more common-sense way to interpret the “for purposes” language of section 85303, subdivision (c), is that for a contribution to be subject to the limitations set by subdivision (a), the contribution to the committee must be useable by the committee to make a monetary or non-monetary contribution to state candidates.

B. Legislative history - Current section 85303, subdiv.(c) was modeled after Proposition 73, section 85303, subdiv.(c), which the FPPC interpreted to allow unlimited sponsor support of its sponsored PAC’s fundraising.

The legislative history of Government Code section 85303 supports our interpretation

⁴ Similarly, nothing in federal or other states’ campaign laws of which we are aware limits support of PAC fundraising by a PAC sponsor. Title 2, U.S.C.A., sections 441b(b)(2)(1)(C) and 441c(b) of the Federal Election Campaign Act (“FECA”), which prohibit corporations, labor organizations and other incorporated entities and federal contractors from making federal campaign contributions, expressly *permit* such entities to sponsor and pay administrative expenses of federal PACs (“separate segregated funds.”) See also, 11 CFR 114.5(b), which expressly permits a connected organization to pay, *inter alia*, the fundraising expenses of its SSF.

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that new subdivision (c)'s language, read together with the language of the 2001 amendment enacting subdivision (a), was meant to exempt from the contribution limits applicable to PACs, payments made that are used for purposes other than making contributions (or non-monetary contributions) to candidates.⁵ Current Government Code section 85303, subdivision (a), only limits contributions to a committee "for the purpose of making contributions to candidates for elective state office"

Government Code section 85303, subdivision (a) provides:

A person may not make to any committee, other than a political party committee, and a committee other than a political party committee may not accept, any contribution totaling more than five thousand dollars (\$5,000) per year for the purpose of making contributions to candidates for elective state office.⁶

This current version of Section 85303 was enacted by Stats.2000, c. 102 (S.B.1223), § 29, eff. July 7, 2000, operative Jan. 1, 2001 (Prop. 34, approved Nov. 7, 2000). This provision replaced the previous Government Code section 85301, subdivision (d), enacted by Initiative Measure Prop. 208, § 9, approved Nov. 5, 1996, eff. Jan. 1, 1997). Former section 85301, subdivision (d), provided:

No person shall make to any committee that contributes to any candidate and no such committee shall accept from each such person a contribution or contributions totaling more than five hundred dollars (\$500) per calendar year. This subdivision shall not apply to candidate-controlled committees, political party committees, and independent expenditure committees.

Section 85301, subdivision (d) of Proposition 208 had replaced Section 85303, subdivision (c), enacted by Proposition 73 in 1988. That former section 85303, subdivision (c), was the model for current Section 85303, subdivision (c). Former section 85303, subdivision (c)(Proposition 73) provided:

⁵ There is no doubt that a sponsor's payment of regular fundraising expenses of its sponsored PAC are not payments "made at the behest of a candidate" for elective state office. Gov. Code § 82015; 2 CCR 18225.7.

⁶ Due to the applicable cost of living adjustment set by Government Code section 83124, the current contribution limit is \$5,600.

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(c) Nothing in this chapter shall limit a person's ability to provide financial or other support to one or more political committees or broad based political committees provided the support is used for purposes other than making contributions directly to candidates for elective office.⁷

The Commission consistently interpreted Section 85303, subdivision (c) of Proposition 73, that payment of a PAC's administrative expenses was not for the "purpose of making contributions to candidates."⁸

⁷ The only difference in language between Proposition 73, section 85303, subdiv. (c) and current section 85303, subdiv. (c), is the omission of the term "directly" from the former statute. This difference is irrelevant to this analysis.

⁸ See *Eldred Advice Letter*, FPPC Advice Letter No. A-89-038, 1989 WL 572668: "The Commission has not yet defined by regulation the meaning of the phrase 'purposes other than making contributions directly to candidates for elective office.' [footnote omitted] However, by inclusion of Section 85303(c) in the Act, it is clear that the drafters meant to exempt some contributions to political committees and broad based political committees from the Act's contribution limits. *The Commission staff believes that the in-kind organizational services to be provided by the Society fall within this exemption. These services essentially cover a portion of the committee's overhead and administrative costs and are not something that can be contributed to candidates.* Therefore, the services provided by the Society to its political action committee would be exempted from the contribution limits under Section 85303(c)." (Italics added.) See also, *Craigie Advice Letter*, FPPC Advice Letter No. A-89-236, 1989 WL 572672, *3; *Bagatelos Advice Letter*, FPPC Advice Letter No. I-89-327, 1989 WL 572750; *Martin Advice Letter*, FPPC Advice Letter No. A-89-301, 1989 WL 572667.

C. Language of Proposition 208, section 85301, subdiv.(d), which was repealed and replaced by current section 85303, subdiv.(c), unlike the current provision limited all contributions to a PAC, and contained no express exclusion as does the current law.

It is important to note that where the previous Section 85301, subdivision (d), provided for a contribution limit “to any committee that contributes to any candidate,” the current Section 85303 only limits contributions “to any committee ... for the purpose of making contributions to candidates for elective office.” As both of these sections were enacted by popular initiative, the people are assumed to know of the differences between these phrases and the effects of these differences.⁹

The phrase “to any committee that contributes to any candidate” sets a limit on all contributions to such a committee, regardless of the purpose of the contribution. However, the phrase “to any committee ... for the purpose of making contributions to candidates” narrows the limit to only that subset of contributions into the committee.

⁹ In *People v. Murphy* (2001) 25 Cal.4th 136, 142, the California Supreme Court discussed the well accepted principles of statutory construction as follows:

As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature’s intent so as to effectuate the law’s purpose. [Citation.] We begin by examining the statute’s words, giving them a plain and common sense meaning. [Citation.] We do not, however, consider the statutory language ‘in isolation.’ [Citation.] Rather, we look to ‘the entire substance of the statute... in order to determine the scope and purpose of the provision.... [Citation.]’ [Citation.] That is, we construe the words in question ‘in context, keeping in mind the nature and obvious purpose of the statute....’ [Citation.] [Citation.] We must harmonize ‘the various parts of a statutory enactment... by considering the particular clause or section in the context of the statutory framework as a whole.’ [Citations.]

In this regard, Section 85303, subdivision (c), exempts payments that are not “used” for the purpose of making contributions to candidates from the contribution limits of section 85303, subdivision (a), and subdivision (a) contains a parallel construction with respect to this exception. Nothing in other provisions of the Act limits this interpretation.

With this difference in mind, when a sponsor pays the fundraising expenses of its sponsored PAC, such an expenditure to “a[] committee that contributes to any candidate,” is not an expenditure “for the purpose of making contributions to candidates.” Such an expenditure is not made at the behest of any candidate. Nor is it earmarked for immediate or later contribution to a candidate. Rather, the expenditure is for the purpose of defraying the expenses of the committee. None of the sponsor’s payment ever makes its way to the bank account of a candidate.

Therefore, the contribution limit set by the current Section 85303, subdivision (a), is inapplicable to expenditures made by sponsoring organizations to pay the overhead expenses of a sponsored political committee’s fundraisers - because such expenditures are not “to any committee ... for the purpose of making contributions to candidates.” Again, the advice provided by the September 2005 Bulletin and FPPC Advice Letter A-05-101 appears to be inconsistent with Government Code section 85303, subdivisions (a) and (c), and is in need of further clarification.¹⁰

D. The Commission may interpret 2 CCR 18215(c)(16) to allow unlimited sponsor payment of its PAC’s fundraising expenses.

2 CCR 18215(c)(16) does not in express terms exclude a sponsor’s payment of its PAC’s fundraising expenses from the definition of “contribution.” However, the Commission did consider and reject the inclusion of PAC fundraising expenses in the list of enumerated and unenumerated expenses covered by the (c)(16) exception. (Minutes and Staff Agenda Item, Commission Meeting of January 29, 1997 .)

Thus, to the extent current Government Code section 85303, subdivision (c) preempts the limited exclusion of sponsor payments for a PAC’s fundraising expenses and the Commission concurs with this analysis, the Commission simply could reinterpret 2 CCR 18215(c)(16) to include payment of a PAC’s fundraising expenses within the unenumerated exceptions (“including but not limited to ...”) *Californians for Political Reform Foundation v. Fair Political Practices Commission* (1998) 61 Cal.App.4th 472. We believe such a reinterpretation is compelled by the language and meaning of new section 85303, subdivision (c), and that the Commission has not only the authority but also the obligation to issue such an interpretive clarification.

¹⁰ Subdivision (c)(16) was added to 2 CCR 18215 on January 29, 1997, whereas Section 85303, subdivisions (a) and (c), were amended to their current form by Proposition 34 in 2000.

Analysis of Question 2 –What is a “Fundraising Expense”

With respect to question 2, assuming, *arguendo*, that expenditures made by sponsoring committees to pay the fundraising expenses of its sponsored political committee *are* subject to the contribution limitations set by Section 85303, subdivision (a), question 2 asks whether certain expenses incurred for staff salary and expenses for goods are “fundraising expenses.”

We note at the outset that 2 CCR 18215(c)(16) excludes staff salary as well as certain costs associated with setting up and administering the PAC. Thus, the application of the regulation – and its exception from the exception for fundraising expenses – will need further clarification if the Commission concludes that Government Code section 85303, subdivision (c), does not govern or require reinterpretation of 2 CCR 18215(c)(16).

With respect to the following, we have listed the ones identified in question 2 above and comment on whether they should be included.

A. Staff Salary:

- (1) Staff salary spent processing combined association dues/PAC contribution checks; entering contribution data from the dues/PAC collection process or a stand-alone PAC fundraiser. *Comment:* Should not be included because this is only indirectly related to fundraising and is part of the staff salary in administering the PAC.
- (2) Staff salary spent copying contributor response information, deposit slips and checks, identifying and following up on incomplete contributor occupation/employer information. *Comment:* Should not be included because this is only indirectly related to fundraising and is part of the staff salary in administering the PAC.
- (3) Staff salary spent identifying potential affiliated contributor contribution information. *Comment:* Should not be included because this is only indirectly related to fundraising and is part of the staff salary in administering the PAC.
- (4) Staff salary spent on sending thank you notes or preparing documents, certificates or other recognition of PAC donors. *Comment:* Should not be included because this is only donor retention activity, not fundraising, and is only indirectly related to fundraising and is part of the staff salary in administering the

PAC.

(5) Staff salary spent on writing or designing PAC fundraising invitations or fundraising solicitations for the PAC sponsor's newsletter, website, or other solicitation avenue. *Comment:* At a minimum, the latter should not be included because this is only indirectly related to fundraising and is part of the staff salary in administering the PAC.

B. Other Costs:

(1) Costs of printing and postage for a calendar of upcoming PAC fundraisers and events. *Comment:* Should not be included because this is only indirectly related to fundraising.

(2) Costs of a sponsor's general conference invitation if it contains reference to a PAC fundraiser held in conjunction with the sponsor's conference. *Comment:* A major portion will not be related to fundraising at all; if contained in a regularly-published newsletter, would be exempt under 2 CCR 18225; otherwise, should not be included because this is only indirectly related to fundraising.

(3) Costs of printing and postage for a donor thank you mailing. *Comment:* Should not be included because this is only donor retention activity, not fundraising, and is only indirectly related to fundraising for the PAC.

(4) Costs of printing a poster board identifying major PAC donors as a means of donor recognition. *Comment:* Should not be included because this is only donor retention activity, not fundraising, and is only indirectly related to fundraising for the PAC.

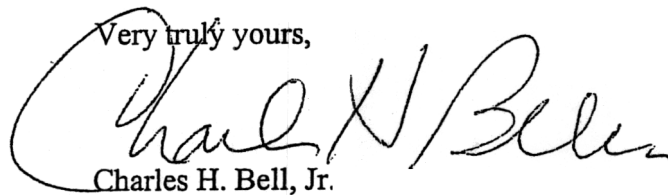
(5) Costs of goods or services provided as premiums for PAC fundraising events or auctions (e.g., golf balls, vehicles, vacation items, etc.) *Comment:* Should not be included because this is only donor retention activity, not fundraising, and is only indirectly related to fundraising for the PAC.

(6) (6) Costs of staff travel (airfare, meals, lodging, etc.) for attendance at a PAC fundraising event. (6) Costs of staff travel (airfare, meals, lodging, etc.) for attendance at a PAC fundraising event.

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The Commission's guidance may be particularly appropriate because other sponsors and their sponsored PACs may raise other fundraising or mixed fundraising and non-fundraising methods for consideration that differ from, or contain some elements of the fundraising methods identified above.

Please contact me if you have any questions concerning this advice request.

Very truly yours,

Charles H. Bell, Jr.

CHB/jg

Enclosures

FPPC Bulletin

September 2005

Fair Political Practices Commission

Volume 31, No. 3

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Toll-free Advice Line: 1-866-ASK-FPPC

Public officials, local government filing officers, candidates, lobbyists and others with obligations under the Political Reform Act are encouraged to call toll-free for advice on issues including campaign contributions and expenditures, lobbying and conflicts of interest. *FPPC staff members answer thousands of calls for telephone advice each month.*

Commission Continues Detailed Discussion of New Strategic Plan

By Jon Matthews
FPPC Information Officer

At its October meeting, the Fair Political Practices Commission will continue its in-depth discussion of strategic planning for future years.

A discussion of Commission enforcement resources and procedures is scheduled for the meeting, to be held on Wednesday, October 12.

"The Commission is encouraging public comment and participation as we consider ideas and goals for all of our programs and services," said FPPC Chair Liane Randolph.

The FPPC has created a new page on our website with links to past meeting agenda materials relating to the planning process and other helpful information:

<http://www.fppc.ca.gov/index.html?id=464>

The Commission has taken many steps to improve efficiency — including the adoption of several expedited enforcement programs — but it is still facing significant resource and staffing challenges. While California's Political Reform Act, adopted by the voters in 1974, has been amended numerous times and the Commission's jurisdiction has increased, the Commission's current fiscal year budget is approximately the same as the budget it received 15 years ago in 1990.

As part of the planning process, commissioners have been discussing the FPPC's current resources, overall mission, previous accomplishments and recommendations, and potential goals for

(continued on page 2)

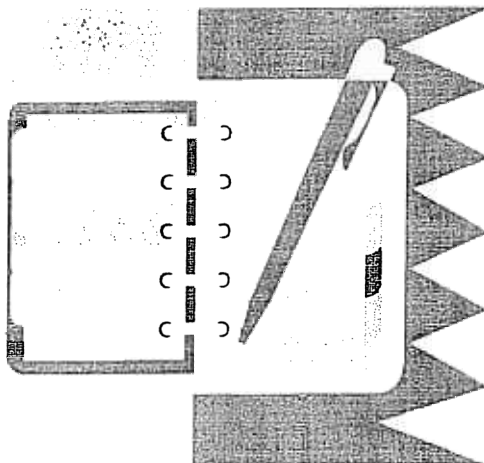
Overview of Reporting Rules Relating to Committee Sponsors

FPPC regulation 18215 defines the term "contribution" for purposes of determining when an entity or organization qualifies as a "committee" under the Political Reform Act and what information the committee must report on its campaign disclosure statements. The regulation also includes exceptions for certain types of payments.

One of those exceptions is found in subdivision (c)(16) of regulation 18215. It allows a political committee's sponsoring organization to pay for the "establishment and administration" of the committee without counting those payments as contributions to the committee.

A "sponsoring organization" is usually an entity (such as a business entity) or an organization (such as a trade association or labor organization) that does one of the following: 1) provides 80 percent or more of the contributions received by the committee, either directly or from the entity's or organization's members, officers, employees, or shareholders; 2) collects contributions for the committee through payroll deductions or dues; 3) provides all or nearly all of the committee's administrative services; or 4) sets the policies for soliciting contributions or making expenditures of committee funds. A candidate or other individual cannot sponsor a committee. (See Gov. Code section 82048.7.)

Regulation 18215(c)(16) defines "establishment and administration" of a sponsored committee to mean the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee. Although these costs are not contributions from the sponsor to the committee, the committee must report them on Schedule C (Nonmonetary Contributions Received) of its campaign disclosure reports (Form 460). The amount paid by the sponsor during the reporting period is disclosed in the "Description of Payment" column on Schedule C, with zeroes in the "Amount" columns.



Other costs paid by a sponsoring organization are contributions to the committee, such as the cost of raising funds for the committee, and are subject to regular reporting and to contribution limits for committees that make contributions to state candidates.

In addition, if the sponsoring organization provides services to a candidate or a committee other than its sponsored committee, those payments are contributions to the candidate or committee, which must be reported by the sponsoring organization. (See FPPC regulation 18419.) The sponsoring organization can file its own reports to disclose the contri-

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...Overview of Reporting Rules Relating to Committee Sponsors

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butions or, in most circumstances, the contributions can be disclosed on the sponsored committee's campaign statements.

Examples:

Members of Firefighters Local 524 have formed a political action committee and have earmarked a portion of their union dues for political contributions to support candidates and ballot measures. Local 524 collects the contributions and transmits them to the committee and pays for legal and accounting services to prepare the committee's campaign reports. The committee discloses the earmarked dues payments as monetary contributions from the members on Schedule A of its campaign reports, but need not count as contributions payments made by Local 524 to collect the funds or for the legal and accounting services. The committee will report the value of the administrative services in the "Description of Goods or Services" column on Schedule C of its campaign reports.

The members of the California Tree Doctors Association make regular dues payments to the association, a portion of which is earmarked for the association's sponsored committee to be used for contributions to state candidates. The association collects and transmits the earmarked dues payments to the committee and provides the committee with office space, staff, and accounting services. The committee discloses the earmarked member dues as monetary contributions on Schedule A of its campaign reports and the administrative services from the association in the "Description of Goods or Services" column on Schedule C. During 2006, the association sends a special mailing to its members to raise additional funds for the upcoming state elections. The association also hosts a golf tournament to raise funds to support the association's activities generally, but the invitation to the golf tourna-

(c) Notwithstanding any other provision of this section, the term "contribution" does not include:

...(16) A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. A "sponsoring organization" may be any person (see Gov't Code 82047) except a candidate or other individual (see Gov't Code 82048.7). "Establishment and administration" means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee.

— Regulation 18215 (c)(16)

ment will include a reply card allowing participants to make additional contributions to the committee. The committee must disclose the payments made by the association for the solicitation mailing and the portion of the costs for the golf tournament invitations that are attributable to the solicitation for the committee on Schedule C as nonmonetary contributions from the association (rather than administrative services). Because the committee makes contributions to state candidates, contributions to the committee are limited to \$5,600 from each source during 2006, including those made to the committee by the sponsoring organization.

Contact the FPPC's toll-free Help Line at 1-866-ASK FPPC if you need assistance.

Citation	Search Result	Rank 1 of 1	Database
CA FPPC Adv. A-05-101			CA-ETH
CA FPPC Adv. A-05-101, 2005 WL 1609624 (Cal.Fair.Pol.Prac.Com.)			
(Cite as: 2005 WL 1609624 (Cal.Fair.Pol.Prac.Com.))			

California Fair Political Practices Commission
*1 PAMELA LAWTON WILSON
FPPC File No. A-05-101
June 20, 2005

Pamela Lawton Wilson
Sullivan Wertz McDade & Wallace
945 Fourth Avenue
San Diego, CA 92101
Re: Your Request for Advice
Dear Ms. Wilson:

This letter is in response to your request on behalf of the San Diego Association of Realtors ("SDAR"), for advice regarding the campaign provisions of the Political Reform Act (the "Act"). [FN1]

QUESTION

May SDAR's invitations to a golf tournament fundraiser include an option for attendees to donate an additional sum earmarked for the association's sponsored recipient committee, without characterizing the entire event's costs and proceeds as sponsored committee receipts and expenditures?

CONCLUSION

Any costs and proceeds directly associated with the political fundraising portion of the golf tournament, including certain costs associated with producing and mailing the invitations to the event, will be considered SDAR's sponsored committee receipts and expenditures.

FACTS

SDAR is considering holding a golf tournament. The tournament will be featured as an SDAR event for members and their guests, offering them an opportunity to network and market, and will not be promoted as a political fundraiser. As an example, the individual admission fee charged to attend the tournament could be set at \$105 per person. Attendees who pay this fee will receive a round of golf and assorted golf favors. Businesses and other organizations will also be invited to pay promotional fees to be featured in advertising and event materials as tournament sponsors. The combined receipts from individual tickets and sponsorship payments will cover SDAR's tournament costs and are expected to generate some net receipts to SDAR's general fund.

Individuals would be invited to the event through communications to members only. SDAR is considering including on the reservation reply form, a line informing attendees they may donate an additional sum that could be set at \$45 above the tournament admission fee, to SDAR's sponsored committee, if this would not result in characterizing the entire event as a political fundraiser. You state that under this fact pattern, tournament attendees who voluntarily donate an additional sum to the recipient committee would pay \$105 plus \$45, for a total of \$150.

ANALYSIS

The term "contribution" is defined in section 82015 as a payment made for political purposes and includes the purchase of tickets for events such as

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(Cite as: 2005 WL 1609624, *1 (Cal.Fair.Pol.Prac.Com.)

concerts, dinners, rallies and similar fundraising events. A payment is made for political purposes if it is received by or made at the behest of a committee. (Regulation 18215(b) (1).)

The Event

The Commission has previously advised that persons who purchase tickets to a concert, which is conducted and billed as a political fundraiser for a particular candidate or committee, are deemed to be making contributions to the candidate or committee in the amount of the tickets purchased, and that all costs associated with the event should be reported as expenditures by the candidate or committee. (Weiser Advice Letter, No. I-03-279 and McDonald Advice Letter, No. I-98-206.) We have also advised that when a joint fundraising event is held and billed as such, the event should be advertised under procedures which notify contributors of the specific amount allocated to each committee or entity for reporting and recordkeeping purposes. (Benton Advice Letter, No. A-98-116, and Parisi Advice Letter, No. I-98-057.)

*2 The facts you provide indicate the main purpose of this event is something other than political fundraising. However, because the fundraiser will be held for dual purposes, any costs incurred by SDAR that are related to the political fundraising efforts which are not reimbursed by the committee would be considered non-monetary contributions from SDAR to the committee. There are some exceptions to the definition of "contribution" for the administrative overhead of sponsored committees. The administrative overhead exception states that the term "contribution" does not include:

"A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument....'Establishment and administration' means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee." (Regulation 18215(c) (16).)

The Invitations

You stated that the invitations would only be sent to members of the association by the sponsor.

Payments for communications supporting or opposing a candidate or committee typically are reportable "contributions" or "expenditures" under the Act. (Sections 82015 and 82025.) Section 85312, enacted by Proposition 34 and later amended by Senate Bill 34, provides an exception to this general rule for "member communications." [FN2]

As amended, section 85312 provides, in part:

"For purposes of this title, payments for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or expenditures, provided those payments are not made for general public advertising such as broadcasting, billboards, and newspaper advertisements." (Emphasis added.)

Because the contributions that are being solicited by SDAR are for SDAR's sponsored committee and not for a candidate or ballot measure, the exception provided in section 85312 will not apply. Therefore, the costs associated with

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the political aspect of the event must be reported as contributions to the committee. According to your facts, this appears to be limited to the portion of the invitation reply card which solicits funds for the committee. Costs of a mailing containing both political and nonpolitical material can be prorated. Costs directly associated with the political message are reportable by the committee, including, for example, the pro rata cost of paper, envelopes, and postage. The allocation may be based on the comparative amount of space devoted to the political and non-political material.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca

*3 General Counsel

By: Trish Mayer

Political Reform Consultant

Technical Assistance Division

FN1. Government Code sections 81000 - 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

FN2. "Member communications" refers to communications to members, employees, and shareholders of an organization or families of those persons and is the colloquial name given to the provisions of section 85312.

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